

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

NO.: 500-06-000947-180

SHELLEY CRAIG

Applicant

v.

AUDIBLE INC.

and

APPLE, INC.

Respondents

APPLICATION OF THE RESPONDENT AUDIBLE INC. FOR LEAVE TO ADDUCE
EVIDENCE AT AUTHORIZATION AND TO EXAMINE THE APPLICANT
(Article 574(3) CCP)

TO THE HONOURABLE DOMINIQUE POULIN, J.S.C., ACTING AS DESIGNATED
JUDGE IN THIS CASE, THE RESPONDENT AUDIBLE INC. RESPECTFULLY
SUBMITS THE FOLLOWING:

1. The Respondent, Audible Inc. ("**Audible**"), seeks leave (i) to adduce evidence at the authorization hearing and (ii) to examine the Applicant prior to the authorization hearing, each with a view to establishing the facts necessary to allow this Court – fully informed – to determine whether the criteria set out in Article 575 of the *Code of Civil Procedure* (the "**CCP**") have been satisfied.

I. THE PROPOSED CLASS ACTION

2. On or about September 28, 2018, Panagiotis Leventakis ("**Mr. Leventakis**") filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* ("**Authorization Application**") against Audible, Apple Inc. ("**Apple**"), Apple Canada Inc., Amazon.com, Inc. and Amazon.com.ca, Inc. in connection with certain alleged anti-competitive practices in the supply and sale of audiobooks (the "**Quebec Action**").
3. The day before, on September 27, 2018, a putative class action proceeding was filed before the Supreme Court of British Columbia in *Williams v. Audible Inc.*, court docket number VLC-S-S-1810561 (the "**BC Action**"), raising substantially similar

issues and involving the same putative class members as the Quebec Action. Subsequently, a third class action of a similar nature was filed before the Ontario Superior Court of Justice in *Sweet v. Audible Inc. et al.*, court docket number CV-18-606353-00CP.

4. Mr. Leventakis promptly sought and obtained a temporary stay of the Quebec Action pending the outcome of the BC Action, which stay was renewed on nine occasions, as appears from the court record.
5. On December 19, 2023, the Court of Appeal for British Columbia dismissed the appeal from the judgment of the Supreme Court of British Columbia that refused to certify the BC Action.
6. Following the refusal of the BC courts to certify the BC Action, counsel for Mr. Leventakis advised this Court that they would not seek to renew the stay in Quebec and instead requested that the Quebec Action be reactivated, as appears from the letter from Me Careen Hannouche dated February 15, 2024, filed herewith as **Exhibit R-1**.
7. By the same communication, counsel for Mr. Leventakis indicated their intention to seek the Court's permission to amend various aspects of the Authorization Application to reflect amendments made in the BC Action, including a narrowing of the class period and discontinuance as against Amazon.com, Inc., Amazon.com.ca, Inc., and Apple Canada Inc., as appears from Exhibit R-1.
8. On or about June 28, 2024, Mr. Leventakis applied to amend the Authorization Application, and on September 10, 2024, this Court authorized the requested amendments, as appears from the court record.
9. Shortly thereafter, and before the amended application could be filed, counsel for Mr. Leventakis advised this Court that Mr. Leventakis would no longer be able to act as representative plaintiff in the proposed class action and that a new proposed representative would need to be identified, as appears from the email from Me Careen Hannouche dated September 16, 2024, filed herewith as **Exhibit R-2**.
10. On October 30, 2024, counsel for Mr. Leventakis informed the Court that, despite their efforts, they had not yet identified a candidate to replace Mr. Leventakis as proposed class representative and requested an additional extension to complete their search, as appears from the email from Me Careen Hannouche dated October 30, 2024, filed herewith as **Exhibit R-3**.

11. Following discussions between counsel, the Respondents informed the Court that they would not oppose the request made by counsel for Mr. Leventakis for an additional extension of time, until January 23, 2025, to allow for the search for a replacement class representative. This agreement was made on the express condition that the new deadline would be peremptory, such that no further extensions would be permitted if a new proposed class representative was not identified by that date, as appears from the email from Me Margaret Weltrowska dated December 9, 2024, filed herewith as **Exhibit R-4**.
12. On January 23, 2025, counsel for Mr. Leventakis informed the Court that they had identified Ms. Shelley Craig to replace Mr. Leventakis as proposed representative, as appears from the email from Me Careen Hannouche dated January 23, 2025, filed herewith as **Exhibit R-5**.
13. The amendments to the Authorization Application, including the substitution of Mr. Leventakis by Ms. Craig (the “**Applicant**”), were authorized on March 12, 2025, as appears from the court record.
14. Through the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative Amended on February 6, 2025* (the “**Amended Authorization Application**”), the Applicant asks for authorization to institute a class action against Audible and Apple (together, the “**Respondents**”) on behalf of the following proposed class (the “**Class**”):

“All persons, entities, partnerships or organizations in Québec who purchased digital audiobooks, either *à la carte* or by subscription, [...] sold by Audible Inc. or Apple Inc. [...] between September 17, 2003 and January 5, 2017.”
15. Audible is a distributor of digital spoken audio entertainment, information and educational programming, including audio versions of books (“**Audiobooks**”).
16. The Applicant alleges that the Respondents manipulated a purported market for Audiobooks through various agreements (collectively, the “**Distribution Agreements**”), and thereby conspired, agreed and arranged (i) to fix, maintain, increase or control the price for the supply of Audiobooks, (ii) to allocate sales, territories, customers or markets for the supply of Audiobooks, and (iii) to fix, maintain, control, prevent, lessen or eliminate the supply of Audiobooks (para 54 of the Amended Authorization Application).

17. The legal syllogism proposed by the Applicant in support of this theory is as follows:
- (a) The Distribution Agreements contained mutual exclusivity provisions that prohibited Audible from integrating its Audiobook content with any other internet-based media store other than Apple's iTunes Store and that required Apple to source Audiobooks exclusively from Audible (paras 35.2 and 35.3 of the Amended Authorization Application);
 - (b) The Distribution Agreements enabled the Respondents to charge "supra-competitive prices" for Audiobooks sold through the iTunes Store and www.audible.com (including those sales referred through www.amazon.ca) (para 39.1 of the Amended Authorization Application);
 - (c) The Applicant and Class members thus paid "supra-competitive prices" for the Audiobooks. The difference between what the Applicant and Class members paid and what they would have paid but for the Distribution Agreements was an illegal, anti-competitive overcharge (the "**Overcharge**") (para 41 of the Amended Authorization Application); and
 - (d) The Applicant was not—and could not have been—aware of the Distribution Agreements and the fact that the Respondents "were taking part in illegal actions and breaching their obligations" (paras 68(e), (f) and (g) of the Amended Authorization Application).
18. According to the Applicant, the alleged mutual exclusivities granted in the Distribution Agreements and the resulting Overcharge violate:
- (a) Section 45 of the *Competition Act*;
 - (b) Sections 216, 218, 219, and 228 of the *Consumer Protection Act*; and
 - (c) Articles 6, 7 and 1457 of the *Civil Code of Québec*.
19. The Applicant thus seeks from this Court awards in compensatory and punitive damages against the Respondents, the whole to be quantified at the merits.
- II. **APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE PRIOR TO THE AUTHORIZATION HEARING**
20. Audible hereby seeks leave to adduce relevant additional evidence of its own at the authorization hearing, evidence which is essential and indispensable to the Court's analysis of whether the criteria at Article 575 CCP have been satisfied.

21. Courts have generally allowed the filing of evidence consisting of: (i) contracts relevant to the Applicant's claim; (ii) evidence that describes the nature of a respondent's business; (iii) evidence that supplements an incomplete or incorrectly identified document; (iv) evidence that demonstrates, on its, face, the obvious falsity of certain allegations; and (v) evidence that fills a factual void in the authorization application.
22. As filed, the Amended Authorization Application provides an incomplete and, therefore, distorted or plainly incorrect image of the Audible's role in an alleged Audiobook market, and the broader contractual relationship between Apple and Audible.
23. The allegations of the Amended Authorization Application regarding the Distribution Agreements are incomplete, ignore the context in which these agreements were concluded and how the formation and content of the Distribution Agreements was publicly announced on multiple occasions between 2003 and 2008.
24. In addition, the Amended Authorization Application refers to investigations commenced against the Respondents by European antitrust authorities in November 2015 without disclosing the nature of the allegations in the complaint that gave rise to such investigations nor the fact that the investigations were closed by these authorities without a formal decision.
25. To ensure that this Court has all the relevant and accurate evidence necessary to properly assess the Amended Application for Authorization, Audible thus seeks leave to file the sworn statement of Diana Dapito, an unsigned version being filed herewith as **Exhibit R-6**, as well as its supporting Exhibits DD-1 to DD-10 (collectively, the "**Evidence**").
26. Ms. Dapito's sworn statement (Exhibit R-6) and its supporting exhibits provides the Court with the following facts, which are useful and necessary to its assessment of the criteria under Article 575 CCP:
 - (a) A description of Audible's entry and sales of Audiobooks, including its business model and offerings (purchasing options) for Audiobooks during the class period;
 - (b) The context in which the contractual relationship between the Respondents – as it relates to Audiobooks – developed, including their initial agreements relating to technical integration, and sale and supply of Audiobooks;

- (c) Copies of the contracts that make up the Distribution Agreements between the Respondents which have not already been filed by the Applicant as well as evidence of their public disclosure, amendment and ultimate termination by the Respondents; and
 - (d) The nature of the European antitrust investigations and the eventual closure of these investigations without a formal decision.
27. This Evidence will serve (i) to complete the allegations relating to the nature of Audible's business and the contractual framework between the Respondents, either partially or incorrectly alleged in the Amended Application for Authorization, and (ii) to otherwise complete or correct plainly incomplete, misleading or false allegations made in the Amended Application for Authorization.
28. The Evidence is useful and necessary to highlight the significant flaws in the legal syllogism advanced by the Applicant, which is based on allegations of a conspiracy, agreement or arrangement by the Respondents to manipulate a purported Audiobook market to the detriment of Applicant and Class Members.
29. The Evidence is neutral, objective and uncontroversial, is limited only to that which is essential and indispensable to assessing the criteria of Article 575 CCP and, therefore, is proportional within the meaning of Articles 18 and 19 CCP. The Evidence thus fits within the narrow corridor permissible under Article 574(3) CCP.

III. LEAVE TO EXAMINE THE APPLICANT PRIOR TO THE AUTHORIZATION HEARING

30. Audible further seeks leave to examine the Applicant prior to the authorization hearing, a measure that is necessary to complete its submissions regarding the criteria set out in paragraphs (2) and (4) of Article 575 CCP.
31. Specifically, the examination is essential and necessary to clarify the Applicant's knowledge of the allegations contained in the Amended Authorization Application and to assess her suitability to act as representative of the Class.
32. This necessity is heightened by the procedural context of this case, in which the Applicant was appointed as proposed class representative more than six years after the initial proceedings were instituted and only after the Amended Authorization Application was prepared and first filed.¹

¹ See the *Application for Permission to Amend the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* dated June 28, 2024, and its Exhibit P-1, the *Application for*

33. Notably, the general allegations set out at paragraphs 87 to 97 of the Amended Authorization Application have remained largely unchanged since the institution of proceedings in 2018, when Mr. Leventakis was the proposed class representative.
34. Audible proposes that the Applicant's examination address the following elements of the Amended Application for Authorization:
 - (a) The verifications made by the Applicant with regards to the proposed class including (i) efforts made to obtain knowledge on the class members; (ii) to ensure that the class members support the Application for Authorization and (iii) to verify if the class members suffered similar issues;
 - (b) The Applicant's knowledge and understanding of the proposed action;
 - (c) The basis for the Applicant's allegations, specifically:
 - (i) That she did not and could not have been aware of the Distribution Agreements and the limited exclusivity provisions contained therein prior to the filing of the Application for Authorization; and
 - (ii) That she paid the alleged Overcharge for the Audiobooks purchased and has suffered damages as a result.
35. Audible submits that the Applicant's answers on these topics will directly assist the Court in determining whether (i) she has a personal cause of action pursuant to Article 575(2) CCP, and (ii) she is capable of adequately representing the interests of the Class under Article 575(4) CCP.
36. Audible proposes that the examination on these topics take place in person, prior to the authorization hearing, and for a duration not exceeding ninety (90) minutes. As with the Evidence, the proposed examination is proportional within the meaning of Articles 18 and 19 CCP.
37. The co-Respondent, Apple, endorses the present Application.
38. The present Application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the Respondent Audible Inc. to file into evidence a sworn statement that is materially the same as the unsigned sworn statement of Diana Dapito, Exhibit R-6, as well as its supporting Exhibits DD-1 to DD-10;

AUTHORIZE the Respondent Audible Inc. to depose the Applicant Shelley Craig on the topics identified in paragraph 22, in person, prior to the authorization hearing, and for a duration of ninety (90) minutes;

THE WHOLE without legal costs, save in case of contestation.

Montréal, August 7, 2025



DENTONS CANADA LLP

Lawyers for the Respondent AUDIBLE INC.

Mtre Margaret Weltrowska

Mtre Erica Shadeed

1 Place Ville Marie, Suite 3900

Montréal, QC H3B 4M7

Email : margaret.weltrowska@dentons.com/

erica.shadeed@dentons.com

Telephone: 514 878 5841 / 4191

Fax: 514 866 2241

Our reference: 557495-104

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Class Actions)

NO.: 500-06-000947-180

SHELLEY CRAIG

Applicant

v.

AUDIBLE INC.

and

APPLE, INC.

Respondents

**LLIST OF EXHIBITS IN SUPPORT OF THE RESPONDENT AUDIBLE INC.'S
APPLICATION FOR LEAVE TO ADDUCE EVIDENCE AT AUTHORIZATION AND TO
EXAMINE THE APPLICANT**

Exhibit R-1:	Letter from Me Careen Hannouche dated February 15, 2024;
Exhibit R-2:	Email from Me Careen Hannouche dated September 16, 2024;
Exhibit R-3:	Email from Me Careen Hannouche dated October 30, 2024;
Exhibit R-4:	Email from Me Margaret Weltrowska dated December 9, 2024
Exhibit R-5:	Email from Me Careen Hannouche dated January 25, 2025; and
Exhibit R-6:	Unsigned sworn statement of Diana Dapito, and its supporting Exhibits DD-1 to DD-10.

A copy of these exhibits is filed with the present application.

Montréal, August 7, 2025

Dentons Canada LLP

DENTONS CANADA LLP

Lawyers for the Respondent AUDIBLE INC.

Mtre Margaret Weltrowska

Mtre Erica Shadeed

1 Place Ville Marie, Suite 3900

Montréal, QC H3B 4M7

Email : margaret.weltrowska@dentons.com /
erica.shadeed@dentons.com

Telephone: 514 878 5841 / 4191

Fax: 514 866 2241

Our reference: 557495-104

No. 500-06-000947-180

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
SUPERIOR COURT
(Class Action Division)

SHELLEY CRAIG

Applicant

v.

AUDIBLE INC.

-and-

APPLE, INC.

Respondents

**APPLICATION OF THE RESPONDENT AUDIBLE
INC. FOR LEAVE TO ADDUCE EVIDENCE AT
AUTHORIZATION AND TO EXAMINE THE
APPLICANT (Article 574(3) CCP), LIST OF
EXHIBITS, and EXHIBITS R-1 TO R-6**

O R I G I N A L

Dossier 557495-104

DENTONS

Dentons Canada LLP

Me Margaret Weltrowska / Me Erica Shadeed

1, Place Ville Marie, bureau 3900

Montréal QC H3B 4M7

margaret.weltrowska@dentons.com

erica.shadeed@dentons.com

Tél. : 514 878-5841 / 514 878-4191

Télec. : 514 866-2241

dentons.com

BB0822